Necessarily the treatment of each subject is brief,—but it is as well clear and straightforward, and an ample bibliography is provided at the end of each section.

The widespread use of such books as a basis for group discussion will help in the interpretation of social evils to those who need only to realize the crying needs of modern life to hasten and join the swelling ranks of the army of the common good. Certainly the adoption of a concrete programme by that institution which stands for the realization of the highest ideals in our community life marks an advance in constructive democracy. Many rejoice that at least, consciously and deliberately, the Church of Christ has entered the field of social endeavor to hasten the coming of His Kingdom.

REVIEWS

Beard, Charles A. *The Supreme Court and the Constitution.* Pp. 127. Price $1.00. New York: Macmillan Company, 1912.

This splendid little volume of Professor Beard was written to answer the question, or at least to point out the methods for answering the question: "Did the framers of the federal constitution intend that the supreme court should pass upon the constitutionality of acts of congress?" He concludes (p. 51) that "we are justified in asserting that twenty-five members of the convention (of 1787) favored or at least accepted some form of *judicial control.*" But the evidence he submits as to these twenty-five members includes not only their statements *during* the constitutional convention, but also their statements at any time *subsequent* thereto. Indeed, he feels that William Johnson, Robert Morris and George Washington favored judicial control and, by implication, the power of the supreme court to nullify congressional acts, because the two former voted for, and the last named signed, the *Judicial Act of 1789!* However, scrutiny of the evidence presented as to these twenty-five members, who, says Professor Beard, were the "leading members," reveals that, in terms of his own evidence, but eight of these twenty-five expressed, *during the constitutional convention,* any belief that the courts would have power to nullify congressional legislation. Therefore, his conclusion (p. 55) that "the opponents of judicial control must have been fully aware that most of the leading members regarded the nullification of constitutional laws as a normal function" is scarcely justifiable, as those members did not have the advantage of knowing at that time what the members of the convention might be thinking a few years thereafter.

Professor Beard says that "the accepted canons of historical criticism warrant the assumption that, when a legal proposition is before a law-making body and a considerable number of the supporters of that proposition definitely assert that it involves certain important and fundamental implications, and it is nevertheless approved by that body, without any protests worthy of mention, these implications must be deemed a part of that legal proposition when it becomes a law; provided, of course, that they are consistent with the letter and spirit of the instrument." To this assumption *per se* no one could object, but no proposi-

tion, "legal" or other, to confer directly upon the judiciary the power of passing upon the constitutionality of acts of Congress was submitted to the convention. The only proposition looking toward giving this power to the judiciary was the proposal to create a revisionary council, associating the leading judges with the executive, and giving this council power to nullify congressional laws. Yet this proposition was clearly defeated despite the fact that all those who favored judicial control seemed to have spoken and voted in its behalf. The opponents of judicial supremacy over congressional legislation might have concluded, therefore, that the friends of the measure would be outvoted in the convention and that the proposition would find no acceptance outside the convention, the latter assumption being clearly in accord with the history up to that time. Moreover, both the letter and spirit of the constitution looked toward equality of departments, not to the supremacy of one over the others. Professor Beard counts all those who favor an independent judicial department as in favor of the supremacy of the judicial department. The whole theory of the framers of the constitution hinged upon departmental equality. The judges, it was pointed out time and again, would have independence because of their position as "expositors of the laws." Said Wilson (Beard, p. 57): "The judges, as expositors of the laws, would have an opportunity of defending their constitutional rights." Madison's argument for the revisionary council was that it was "an auxiliary precaution in favor of the maxim" that "requires the great departments of power to be kept separate and distinct."

There is direct evidence in Professor Beard's book to show only that the idea of giving to the judiciary power to nullify congressional statutes was accepted by but eight of the fifty-five members, and nothing to show that the framers of the constitution intended to depart from the generally accepted conceptions as to the position of the judiciary at that time. A fair canon of criticism would be that, when a frame of government is being drawn up, the phrases and words therein used must be given the meaning current at the time, unless there is definite debate and definite assertion to prove that the framers specifically intended such phrases and words to have some other meaning. The constitution was framed, as were all of the state constitutions preceding it, on the belief that the three departments should be equal, not that two should be subordinate to the third. The "argument of silence" would therefore seem to be in favor of the proposition that the framers of the constitution did not intend to grant a position of pre-eminence to the judiciary. Judicial control, meaning the power of the judges to expound the laws in the way that they were then expounding them in England and in this country, and consonant with departmental equality, the framers no doubt intended to accept, but Professor Beard has failed to show that they intended to establish a new principle and give to the courts an unprecedented power. The book is by far the most valuable contribution that has yet been made to this intensely interesting subject. The author has pointed out the proper method of procedure, knowing full well that his work is not final but hoping that it will lead to definite and valuable discussions on the subject.

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